

charges pending against Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

5. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts ("Board") is an agency of the State of Missouri created and established pursuant to § 334.120, for the purpose of executing and enforcing the provisions of Chapter § 334 RSMo.

2. Respondent is licensed by the Board as a physician and surgeon, license number 104043. License was first issued on June 29, 1993. Respondent's license is current, and was current and active at all times relevant herein.

3. A Kansas Board of Healing Arts *Order of Emergency Suspension of License* suspended Licensee's license to practice medicine in the State of Kansas on September 23, 1988. On December 9, 1988 Licensee and the Kansas Board entered into a Stipulation wherein conditions were placed on Licensee's license. An Enforcement Order adopting the Stipulation was issued by the Board on January 3, 1989. In a Journal Entry dated December 22, 1992 the Kansas Board found that the December 9, 1988 Stipulation expired by its own terms on December 9, 1990 and since December 9, 1990 Licensee's license in Kansas has been without any limitations or restrictions.

4. On or about April 25, 2005, Licensee voluntarily agreed to a *Consent Order* with the Kansas State Board of Healing Arts ("KSBHA"). A redacted copy, provided by KSBHA, of said *Consent Order* is attached and incorporated as Exhibit B as if fully set forth herein.

5. The basis for said *Consent Order* were allegations that:

- a. from approximately December 2003 through April 2004, Licensee prescribed controlled substances to a new colleague and the colleague's spouse on approximately four separate occasions,
- b. Licensee did not conduct a complete physical examination or evaluation prior to prescribing controlled substances,
- c. Licensee failed to create and/or maintain a timely record of treatment,
- d. Licensee stipulated that his conduct constituted unprofessional conduct pursuant to K.S.A. 65-2837(b)(23) and that pursuant to K.S.A. 65-2836(b), the Kansas State Board of Healing Arts had grounds to impose a fine, revoke, suspend, limit or censure Licensee's license, and
- e. Licensee voluntarily agreed to pay a fine of one thousand dollars (\$1,000.00).

6. The *Consent Order* issued April 25, 2005 and the *Order of Emergency Suspension of License* are final disciplinary actions pursuant to § 334.100.2(4)(g) RSMo 2002.

JOINT PROPOSED CONCLUSIONS OF LAW

1. Cause exists to discipline Respondent's license pursuant to §§ 334.100.2, (6), (8), RSMo 2000 which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of

registration or authority, permit or license for any one or any combination of the following causes:

* * * *

(6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * * *

(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employers;

* * * *

II.

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of § 621.110, RSMo. This Agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. 104043, issued to Licensee is hereby **PUBLICLY REPRIMANDED.**

2. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

3. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

LICENSEE

BOARD

Richard A. Kimmell MD
Richard Kimmell, M.D.

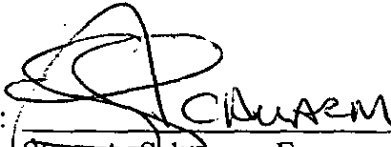
Tina Steinman
Tina Steinman
Executive Director

Glenn E. Bradford
Glenn E. Bradford
Mo. Bar No. 27396
GLENN E. BRADFORD & ASSOCIATES, P.C
The Palace Building
Suite 230
1150 Grand Avenue
Kansas City, Missouri 64106
(816) 283-0400 FAX (816) 283-0820
Attorneys for Board of Registration
for the Healing Arts

EFFECTIVE THIS 17 DAY OF April, 2006

029553 / 107904
SASCH 1324094

POL SINELLI SHALTON WELTE SUELTHAUS PC

By: 
Steve A. Schwarm, Esq.
Mo. Bar No. 58118 (temporary)
555 Kansas Avenue, Suite 301
Topeka, Kansas 66603
(785) 233-1446
Fax No. (785) 233-1939

ATTORNEYS FOR MISSOURI STATE BOARD
OF REGISTRATION FOR THE HEALING ARTS

048437 / 107600
SASCH 1331974

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

FILED

APR 25 2005 *dy*

KS State Board of Healing Arts

In the Matter of)

RICHARD A. KIMMELL, M.D.)
Kansas License No. 04-20924)
_____)

Docket No. 05-HA-*05*

CONSENT ORDER

COMES NOW the Kansas State Board of Healing Arts ("Board"), by and through Stacy L. Cook, Litigation Counsel ("Petitioner"), and Richard A. Kimmell, M.D. ("Licensee"), by and through counsel Steve A. Schwarm, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known address to the Board is 12735 S. Darnell, Olathe, Kansas 66062.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-20924 on approximately June 14, 1985. Licensee last renewed his license on July 21, 2004.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2869.
4. The Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

6. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his rights to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

9. From approximately December 2003 through April 2004, Licensee prescribed controlled substances to a new colleague and the colleague's spouse on approximately four separate occasions.

10. Licensee did not conduct a complete physical examination or evaluation prior to prescribing controlled substances.

11. Licensee failed to create and/or maintain a timely record of treatment.

12. Pursuant to K.S.A. 65-2836(b), unprofessional conduct, as further defined by K.S.A. 65-2837(b)(23), the Board has grounds to impose a fine, revoke, suspend limit, or censure Licensee's license.

13. According to K.S.A. 65-2838(b), the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

14. In lieu of the conclusion of formal proceedings, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action with respect to his license to practice medicine and surgery:

- a. Licensee agrees to pay a fine of one thousand dollars (\$1000.00).
Such fine is due and payable to the Board of Healing Arts on or before May 23, 2005.

15. Licensee's failure to comply with the provisions of the Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate according to the Kansas Administrative Procedure Act.

16. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 64-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

17. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to, those

alleged damages, actions, liabilities, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

18. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to entities requiring disclosure of the Consent Order.

19. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

20. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

21. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel, in the consideration of this offer of settlement and agrees not to seek the disqualification or

recusal of any Board member in any future proceedings on the basis that the Board member has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

22. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

23. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to the Kansas State Board of Healing Arts, Attn: Stacy L. Cook, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

25. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

26. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

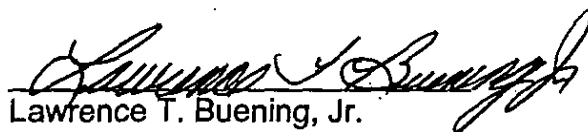
27. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Licensee shall pay a fine of one thousand dollars (\$1000.00). Such fine is due and payable to the Board of Healing Arts on or before May 23, 2005.

IT IS SO ORDERED on this 25th day of April, 2005.

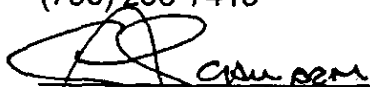
**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**


Lawrence T. Buening, Jr.
Executive Director

PREPARED AND APPROVED BY:



Stacy L. Cook #16385
Litigation Counsel
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3065
(785) 296-7413



Steve A. Schwarm #13232
Polsinelli, Shalton & Welte, P.C.
555 Kansas Ave., Suite 301
Topeka, Kansas 66603
(785) 233-1939

AGREED TO BY:



Richard A. Kimmell, M.D.
Licensee

CERTIFICATE OF SERVICE

I, hereby certify that I served a true and correct copy of the **CONSENT ORDER**
by United States mail, postage prepaid, on this 25th day of April,

2005 to the following:

Steve A. Schwarm
Polsinelli, Shalton & Welte, P.C.
555 Kansas Ave., Suite 301
Topeka, Kansas 66603

and the original was hand-delivered to:

Lawrence T. Buening, Jr.
Executive Director
Kansas State Board of Healing Arts
235 S. Topeka Boulevard
Topeka, Kansas 66603-3068



Stacy L. Cook